

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VIDA CAMERON

Claimant

VS.

ALLIANT FOODSERVICE, INC.

Respondent

AND

TRAVELERS PROPERTY & CASUALTY

Insurance Carrier

Docket No. **242,348**

ORDER

Claimant appealed Administrative Law Judge Bryce D. Benedict's Award dated September 19, 2000. The Board heard oral argument on March 7, 2001.

APPEARANCES

Claimant appeared by her attorney, Bruce A. Brumley. Respondent and insurance carrier appeared by their attorney, John Carpinelli.

RECORD & STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The claimant requested review of Administrative Law Judge Bryce D. Benedict's award dated September 19, 2000. The Administrative Law Judge determined that as a result of the December 12, 1997, accident the claimant had not sustained any permanent impairment.

The claimant filed an application for review listing as issues the nature and extent of disability and the compensability of the claim. At oral argument before the Board, the claimant indicated that the determination of the nature and extent of disability was limited to the claimant's functional impairment. The claimant additionally raised the issues of entitlement to future and unauthorized medical compensation.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

It is undisputed that on December 12, 1997, the claimant suffered a low back injury while lifting four one-gallon cans of salad dressing. Initially, the claimant received treatment from Doug Frye, M.D. The initial diagnosis was low back muscle strain. The claimant was prescribed muscle relaxants, anti-inflammatory medication and was placed on modified duty. The claimant was released to regular duty without restrictions on January 9, 1998.

In March 1998, the claimant complained of worsening back discomfort and was again placed on modified duty with lifting restrictions. The claimant was prescribed medication and physical therapy. On March 30, 1998, the claimant was returned to regular duty. In April 1998, an EMG of the lower extremities was ordered and revealed no evidence of lumbosacral radiculopathy or lower extremity entrapment neuropathy.

On July 20, 1998, the claimant was examined by Brad E. Wallace, M.D. The doctor diagnosed degenerative disease of the lumbar spine and noted the claimant did not have any significant radicular component. The doctor recommended the claimant pay close attention to proper lifting techniques and claimant was returned to regular duty with no restrictions. The claimant received no significant additional treatment for her low back complaints with the exception of occasional visits to her family physician, Jag Mohan Walia, M.D.

At the regular hearing, the claimant complained of pain in her hands, fingers, wrists, both elbows, shoulders, the center of her chest, back, neck, knees, hips and legs.

The claimant is alleging that she sustained a functional impairment as a result of her work-related injury, which consists not only of a loss of physiological capability due to the lumbosacral injury but also a psychological impairment which claimant contends is directly traceable to her physical injury.

It should be noted that claimant originally alleged a series of accidents from December 12, 1997, through March 3, 1999. When the Administrative Law Judge took stipulations the respondent only admitted the December 12, 1997, accident and denied a

series of accidents. When the Administrative Law Judge asked claimant's counsel if that was acceptable he responded in the affirmative noting that as long as respondent admitted written notice it did not matter too much. In any event the claimant failed to establish a series of accidents through the dates alleged.

The evidence regarding the claimant's functional impairment related to her back complaints was provided by three doctors. Drs. Baker, Hu and Rope all opined that the claimant had a 5 percent impairment using the *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition, DRE lumbosacral category 2. Dr. Rope additionally rated the claimant with a 2 percent impairment to the neck.

Zhengyu Hu, M.D., a board certified physiatrist, first saw the claimant at the request of the insurance carrier on September 13, 1999. Dr. Hu had a follow-up visit with the claimant on September 30, 1999. On examination, Dr. Hu noted that the claimant walked without any signs of difficulties and was very calm. His physical examination revealed tenderness in the paraspinous muscles on the left side with no muscle spasm. Significantly, the claimant failed to advise Dr. Hu that she had prior low back permanent impairment ratings and only gave information related to the December 1997 accident. Dr. Hu rated the claimant at 5 percent but noted that the mechanism of injury could not explain the claimant's chronic complaints of pain. After review of the claimant's prior medical history, Dr. Hu opined that the claimant had no increased impairment attributable to the December 1997 injury. While Dr. Hu testified that the claimant's symptoms were a temporary exacerbation, he concluded they did not result in a permanent aggravation of her preexisting back condition.

On June 16, 1999, the claimant was examined by Philip L. Baker, an orthopedic surgeon. Following examination, Dr. Baker opined that the claimant had a 5 percent impairment based on the *AMA Guides*, Fourth Edition, and concluded that the entire impairment was preexisting. Dr. Baker testified that the claimant did not suffer any additional impairment while lifting the four one-gallon cans at work and that her injury was a temporary aggravation.

The claimant's attorney referred her to Douglas M. Rope, M.D., board certified in internal medicine, for an evaluation and impairment rating. Dr. Rope examined the claimant on April 12, 1999. He obtained a history from the claimant that detailed the lifting injury in 1997 and the claimant advised him of one prior incident of back problems in 1985 which she advised the doctor had completely resolved. Dr. Rope diagnosed the claimant with degenerative disc disease of the lumbar spine and rated her with a 5 percent impairment for that condition. In addition, due to the loss of motion and tenderness in the neck, the doctor rated 2 percent for that condition which combined for a 7 percent whole body impairment. The doctor's report did not contain any permanent restrictions but he testified that no repetitive lifting, bending would be reasonable and people with degenerative disease should avoid lifting more than 40 to 50 pounds. The doctor concluded that the accident aggravated her degenerative disc disease.

On cross-examination, Dr. Rope admitted that under the *AMA Guides*, Fourth Edition, for cervicothoracic category 1, there would be a zero percent impairment and category 2 would result in a 5 percent impairment. He agreed there is no specific category for a 2 percent. The doctor then noted that he didn't really consider those categories and based his 2 percent to the neck simply upon symptoms that he felt were an accessory to the spine injury. The doctor further admitted that there was no evidence the claimant had sustained any specific neck injury as a result of her December 12, 1997 incident.

As the Administrative Law Judge noted, Dr. Rope was then provided with the claimant's previous medical records and was deposed a second time. After reviewing the claimant's medical history, Dr. Rope concluded his impairment rating would be the same. The doctor opined that 50-60 percent of her current back symptoms were due to the injury in December 1997 and that he would apportion 50 percent of her current back rating to that injury. The doctor agreed that this apportionment was not based on the *Guides* and was just an arbitrary number.

Claimant had a history of prior problems with her low back which included a prior permanent impairment rating and imposition of permanent restrictions. The claimant failed to apprise the doctors examining her for the purposes of this workers compensation claim of her complete prior medical history. It is undisputed that prior to the December 12, 1997, accident the claimant had at least a 5 percent preexisting functional impairment to her lumbosacral spine. Subsequently, all three doctors rated the claimant's lumbosacral spine with a 5 percent impairment. Accordingly, the Board adopts the Administrative Law Judge's determination that the claimant has failed to meet her burden of proof that she sustained any additional permanent impairment as a result of her work-related accident and only sustained a temporary exacerbation of her preexisting condition.

Although claimant's complaints included her entire body, her treatment as a result of her work-related injury was to her low back. At their examinations of claimant, neither Dr. Baker nor Dr. Hu noted any neck complaints and did not find any permanent impairment to the neck due to the work-related injury. Although Dr. Rope assigned a permanent impairment to the claimant's neck, he admittedly did not utilize the *Guides*. When apprised of the fact that claimant had received a permanent impairment rating to her neck prior to the 1997 accident, the doctor concluded that absent direct injury to that area it would be harder to apportion neck symptoms between claimant's preexisting problems and the injury in 1997. The Board concludes the opinions of Drs. Baker and Hu are more persuasive that claimant failed to establish any additional permanent impairment to her neck.

Claimant additionally seeks a psychological impairment which she attributes to her work-related injury. The evidentiary record contains the deposition testimony of Jeanne Frieman, Ph.D., a psychologist, and Patrick L. Hughes, M.D., a board certified psychiatrist.

At approximately the time the claimant began complaining of depression in late 1999, she had instituted a complaint against her employer and some co-employees alleging sexual harassment as well as discrimination. The claimant testified that she would equally apportion the cause of her psychological problems between the pain due to her injury and the stress from the alleged harassment and discrimination.

On September 16, 1999, Dr. Frieman examined the claimant at her attorney's request. Dr. Frieman opined the claimant suffered from depression due to harassment at work as well as the physical pain the work was causing the claimant. Dr. Frieman opined the claimant had a 75 percent functional impairment due to psychological problems. When requested to utilize the *AMA Guides*, the doctor opined that the claimant showed reduced activities of daily living that are moderate, that her social function was mildly reduced, that her concentration is severely reduced and that her adaptation ability is mildly impaired. As the Administrative Law Judge noted, the doctor then concluded that the claimant was severely impaired due to the extent of her depression. Lastly, it should be noted that the doctor testified that the first time she had ever seen or read any part of the Fourth Edition to the *AMA Guides* was immediately prior to her deposition and that she took 5-10 minutes to read the pertinent portions of the *Guides*.

On April 25, 2000, the claimant was examined by Patrick Lawrence Hughes, M.D., a board certified psychiatrist. Dr. Hughes noted that the claimant complained of physical pain in virtually every part of her body and that she listed her pain level as ten on a scale of ten. Dr. Hughes noted that it was significant that the claimant denied any depression on her visit to Dr. Hu which occurred three days before her examination by Dr. Frieman. Dr. Hughes noted that there is no major depression that can resolve itself within two weeks. The doctor opined the claimant was both a malingerer and had a histrionic personality disorder. The doctor further noted that the claimant had selective memory loss. Dr. Hughes specifically concluded that the claimant does not have any depression related to her work.

The Board concludes that Dr. Hughes' testimony is more persuasive and adopts the Administrative Law Judge's findings that claimant failed to meet her burden of proof that she sustained either temporary or permanent psychological impairment that is directly traceable to her work-related injury.

Claimant's request for payment of unauthorized medical is denied because the claimant failed to prove any relationship between the medical bills and her work-related accident. Likewise, future medical treatment is denied based upon the finding that claimant sustained a temporary exacerbation of her preexisting condition which has since resolved. The Administrative Law Judge's determination of these issues is affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bryce D. Benedict dated September 19, 2000, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of July 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Bruce A. Brumley, Attorney, Topeka, Kansas
 John Carpinelli, Attorney, Topeka, Kansas
 Bryce D. Benedict, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director